



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,403	01/22/2001	Veronique Douin	05725.0833-00	7304

22852 7590 08/06/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER
----------

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 08/06/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/766,403

Applicant(s)

DOUIN ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 03 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-9,11-21,23-25,30,33,50,51 and 55-84.Claim(s) withdrawn from consideration: 10,22,26,29,31,32,34-49 and 52-54.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
SREENI PADMANABHAN  
PRIMARY EXAMINER

8/5/03

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 103 rejection is maintained for reasons of record in the Office Action mailed 12/3/02, Paper No. 10; b) Applicant argues, "The Examiner does not demonstrate, however, how one skilled in the art would have been motivated to choose the polyether-polyurethane polymers in WO '047, particularly because the polymers used in WO '047 were used in conjunction with an aqueous hair dye, whereas the environment in the present application is an oil-in-water emulsion". This argument is not persuasive. The Examiner respectfully points out that US '341 and WO '047 are both directed to cosmetically acceptable hair care compositions. US '341 teaches thickeners as additives in their composition and WO '047 teaches polyether-polyurethane polymers as cosmetically acceptable thickeners for use in hair care compositions. Furthermore WO '047 teaches these polymers as combinable with cationic conditioning agents, wherein such a combination imparts superior rheological and conditioning benefits to the user, and US '341 teaches their compositions as comprising cationic conditioning agents. Thus, one of skill in the art would be motivated to add the polyether-polyurethane polymers of WO '047 as the thickeners of US '341 because of the expectation of achieving superior rheological and conditioning benefits to the user. Regarding the arguments toward *In re Kerkhoven*, the Examiner hereby withdraws that argument from the previous Office Action. Regarding Applicant's arguments toward hindsight reconstruction, the Examiner respectfully directs Applicant to Paper No. 10, wherein this argument was addressed. Applicant argues, "In the present case, the Examiner is relying on conclusory statements when dealing with particular teachings of prior art references and specific claims, without properly setting forth the rationale on which she relies to support the assertion of obviousness". This argument is not persuasive. See the sentences above, which clearly provide rationale for the motivation to combine the references.